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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,632	01/16/2004	Robert J. Scherba	SCEE 2 00010	1234
27885	7590	05/13/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			ROYAL, PAUL	
			ART UNIT	PAPER NUMBER

3611

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/759,632

**Applicant(s)**

SCHERBA, ROBERT J.

**Examiner**

Paul Royal

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04/30/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 04/30/04 has been considered by the examiner.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "at least one support pole" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

3. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 12 (second occurrence) has been renumbered 13.

Specifically, there are two claim 12's and no claim 13 in the listing of the claims.

As best understood, the second occurrence of claim 12 should be claim 13.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 recites the limitation "said backlit panel" in line 3. There is insufficient antecedent basis for this limitation in the claim where the "backlit panel" is first introduced in claim 3.

As best understood, applicant intended to recite "said at least one display panel" instead of "said backlit panel". In the interest of prosecuting the application on the

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merits, the Examiner has substituted "said at least one display panel" in place of "said backlit panel".

Applicant must amend the claims so that the claims properly provide the required antecedent basis.

Claims 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear what applicant considers the "at least one support pole". In the interest of prosecuting the application on the merits, the Examiner has taken the position that tubes 300 and 310 correlate the claimed "at least one support pole". Applicant's correction of the claims and/or drawings and/or specification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Fussell (US 4,597,633).

Fussell teaches inflatable device including at least one multimedia device (58) which projects an image;

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at least one display panel connected to at least a side portion of the inflatable component, wherein the at least one display panel includes a backlit panel (54,55) designed to display at least one image from the multimedia device (58),

wherein the inflatable component includes a ledge (57) positioned internally of the inflatable component.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fussell, as applied to claim 1 and claim 6, in view of Vicino (US Re 33,709).

Fussell teaches an inflatable device having the claimed limitations except at least one printed banner connected to a portion of the inflatable component.

Vicino teaches an inflatable sign including a banner (13) connected to a portion of the inflatable sign to provide a low cost self-supporting display.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the inflatable device of Fussell to include a banner (13) connected to a portion of the inflatable sign, the banner illuminable by one of the multimedia devices, as taught by Vicino, to provide a low cost self-supporting display.

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7. Claims 1-9, and 21, 25, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherba (US 5,555,679) in view of Salesky et al. (US 6,367,934).

Scherba teaches a portable inflatable display device that includes:

at least three sidewalls (18) being inflatable;

a side curtain/banner (36);

and an inflatable top (30):

the portable inflatable display device, when inflated includes a generally flat base, which is formed by the sidewalls (18);

at least one support pole (24) used to at least partially rigidify a sidewall of the inflatable component; and

at least one anchoring strap (see column 3, lines 3-13) .

Scherba does not teach the inflatable device including:

at least one multimedia device which projects an image;

a ledge positioned internally of the flexible walled device, the ledge designed to at least partially support at least one of the multimedia devices;

at least one backlit display panel connected to at least a side portion of the flexible walled device, the backlit panel designed to display at least one image from the multimedia device.

Salesky et al. teaches a portable flexible walled display system including:

at least one multimedia device (101-103, 411-414) which projects an image;

a ledge positioned internally of the flexible walled device, the ledge designed to at least partially support at least one of the multimedia devices (502a, 502b, 502c);

at least one backlit display panel (121-123) connected to at least a side portion (111-113) of the flexible walled device, the backlit panel designed to display at least one image from the multimedia device, to provide a display system which is portable, lightweight and easy to assemble/ disassemble, for providing imagery.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the inflatable device of Scherba to include at least one multimedia device which projects an image, a ledge positioned internally of the flexible walled device, the ledge designed to at least partially support at least one of the multimedia devices, at least one backlit display panel connected to at least a side portion of the flexible walled device, the backlit panel designed to display at least one image from the multimedia device, as taught by Salesky et al., to provide a display system which is portable lightweight and easy to assemble/ disassemble, for providing imagery.

Note, where Scherba teaches a side curtain/banner, the addition of indicia or printed matter on the side curtain/banner is not functionally related to the substrate (side curtain/banner) as recited and it will not distinguish the invention from the prior art in terms of patentability. Further, it would require only routine skill in the art and is well known to use the side curtain/banner to display imagery, for example, to alert potential customers that the stand/ portable inflatable display device is open for business.

8. Claims 10-13, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherba and Salesky et al., as applied to claims 8, 9 and 21, as applicable, in further view of Shapoff (US 5,586,594).



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Scherba and Salesky et al., as applied to claims 8, 9 and 21, as applicable, teaches the claimed limitations except a lighting device, at least partially supported in a side opening of the inflatable device, which at least partially illuminates a printed banner.

Shapoff teaches a lighting device (82), at least partially supported in a side opening (60) of an inflatable device (10), which can at least partially illuminate a removable banner/backlit display panel (83), to provide an inflatable display which is collapsible, lightweight and easy to erect and use.

It would have been obvious to one of ordinary skill at the time of the invention to modify the flexible walled device of Scherba and Salesky et al., as applied to claims 8, 9 and 21, as applicable, to include a lighting device, at least partially supported in a side opening of an inflatable device, which can at least partially illuminate a removable banner/backlit panel, as taught by Shapoff, to provide an inflatable display which is collapsible, lightweight and easy to erect and use.

9. Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherba and Salesky et al., Shapoff, as applied to claims 10-13, as applicable, in further view of Colson et al. (US 5,313,999).

Scherba and Salesky et al., Shapoff, as applied to claims 10-13, as applicable, teaches the claimed limitations except wherein the inflatable component includes a light blocking material.

Colson et al. teaches a light blocking material/fabric light control window covering to provide a window covering which has a neat and uniform construction.

It would have been obvious to one of ordinary skill at the time of the invention to modify the flexible walled device of Salesky et al., Scherba, Shapoff, as applied to claims 10-13, as applicable, to include wherein the inflatable component includes a light blocking material, attachable to a side opening, and can at least partially prevent light from the lighting device interfering with images displayed or generated by the multimedia device in the interior of the inflatable component.

Note, it would involve only routine skill in the art to apply the light blocking material/fabric light control window covering to the side opening because the light blocking material/fabric light control window primarily operates to cover such an opening.

10. Claims 19-20, 22 and 24, 26, 28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scherba, Salesky et al., Shapoff, and Colson et al., as applied to claim 14 and 18, as applicable, in further view of Antinone (3,763,917).

Scherba, Salesky et al., Shapoff, and Colson et al., as applied to claim 14 and 18, as applicable, teaches the claimed limitations except wherein the light blocking material includes an access opening.

Antinone teaches a detachable screen/light blocking material that includes an access opening (8) to provide a flexible, easily detachable window screen.

It would have been obvious to one of ordinary skill at the time of the invention to modify the flexible walled device of Scherba, Salesky et al., Shapoff, and Colson et al. as applied to claim 14 and 18, as applicable, to include wherein the inflatable component includes a light blocking material which has an access opening, as taught by Antinone, to provide a flexible, easily detachable window screen.

Note where the top of Scherba is inflatable, it can serve as an inflatable top display because it would require only routine skill in the art and is well known to include indicia or printed matter on the inflatable top to attract customers to the stand/ portable inflatable display device and indicate it is open for business.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gross teaches an illuminating ballon. Freeman teaches a projector screen unit. Pentes teaches an image projecting apparatus. Drop, Sr. teaches a viewing machine. Vicino '591 teaches an inflatable display structure. Fussell teaches an image reception system. Fritts et al. teaches an inflatable shelter. Vicino '709 teaches an inflatable sign. O'Brien teaches a traffic safety device. Lee teaches an inflatable sign. Hale et al. teaches an inflatable structure. Suehle et al. teaches an inflatable screen. Lewis teaches an inflatable structure. Verret teaches a flexible face sign. Carolan teaches an air inflated portable billboard. Ohmuku teaches balloon-type advertising equipment.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Royal whose telephone number is 571-272-6652. The examiner can normally be reached on 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D. Morris can be reached on 571-272-6651. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



P. Royal  
5/6/05

Paul Royal  
Examiner  
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